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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 931 of 1989
T.A. No.

DATE OF DECISION 1.1.1990

Bishan Dass Applicant (s)

Sh. K.L. Bhatia Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

Shri M.L. Verma Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice- Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Bishan Dass, Inspector in the Inspectorate of Armaments, Dte. General of Security, Cabinet Secretariat, New Delhi, against impugned order No. 2(4)/INSP/80 dated 3.2.89 passed by the Chief Inspector of Armaments (Respondent No. 3) against wrong fixation of pay and arbitrary deduction from his pay and allowances.

2. Brief facts of the case, as stated by the applicant, are that he retired from the Army on 1.12.1977 from the post of Sub. Major/Hony. Captain before attaining the age of 55 years. At that time he was getting a pay of Rs. 1,000/- p.m. The applicant was re-employed in the Inspectorate of Armaments as Sub-Inspector on 1.9.80 and his pay was fixed at Rs. 530.00 i.e. Rs. 425.00 + seven increments of Rs. 15.00 plus Rs. 50 as special pay under the Ministry of Defence O.M. No. 2(7)/78/6664/(Civ.I) dated 30.8.1978 as under:-

Army pension	Rs. 359.00
P.E.G.	Rs. 80.00
Pay	<u>Rs. 425.00</u>
	Rs. 864.00

Less amount of pension ignorable for fixation	Rs. 125.00
	Rs. 739.00
Last pay drawn	Rs. 1000.00
Pay fixed	Rs. 530.00

The applicant was given D.A./A.D.A. and I.R. etc. on the maximum of the scale of pay. Vide Ministry of Defence's O.M. dated 8.2.83 (Annex II to the application), it was decided that in the case of re-employed ex-servicement retiring before the date of 55 years, the pension as indicated below may be ignored in fixing their pay on re-employment:-

- (i) In the case of serving officers, the first Rs. 250.00 of pension;
- (ii) in the case of personnel below Commissioned Officers rank, the entire pension. It was also stipulated that in case of those who were already on re-employment the pay may be refixed on the basis of these orders provided they opt to do so. If they so opt, then terms will be determined afresh as if they have been re-employed for the first time.

The applicant did not opt for the fixation of pay by ignoring his full pension in terms of O.M. dated 8.2.83 as it would have resulted in a substantial loss in his emoluments. The persons who did not suffer any loss gave their options for fixation of pay in terms of O.M. dated 8.2.83. and the persons who were appointed after the crucial date of 25.1.83 enjoyed the benefit of fixation of pay by ignoring their full pension.

3. In the meanwhile the applicant was promoted to the post of Inspector in the scale of Rs. 550-900 plus Rs. 75/- as Special Pay w.e.f. 1.5.86.

4. In accordance with the recommendations of the Fourth Pay Commission, instructions were issued vide Deptt. of Personnel & Admin. Reforms O.M. No. 13/7/86-Estt. (Pay II) dated 9.12.86 for the fixation of pay of the re-employed persons in the revised scale of pay. It was also decided vide O.M. dated 11.9.87 (Annex IV to the application) that the pay of pensioners who were in re-employment on 1.1.86 and whose pay was fixed in accordance with the provision of O.M. dated 9.12.86 may be refixed w.e.f. 1.1.86 by taking into account the revised pension. It has also been ordered that the over-payments already made may be recovered/

adjusted. The applicant's pay was fixed in the revised scale of Rs. 1640-2900 as Sub Inspector at Rs. 1351.00 w.e.f. 1.1.86 and in the revised scale of Rs. 2000-3200 as Inspector at Rs. 1471.00 w.e.f. 1.5.86 after deducting Rs. 589.00 on account of increased pension w.e.f. 1.1.86. The revised pension of the applicant has been fixed at Rs. 1047.00 with an increase of Rs. 589.00. The impugned order is discriminatory as the enhanced amount of pension with effect from 1.1.86 will be deducted from the pay of the applicant whereas the pensioners whose pay has been fixed by ignoring full pension will be getting a full amount of pay without any deduction. It will thus be violative of Articles 14 and 16 of the Constitution of India. The applicant has cited the case of Shri Rohitaswa Singh who retired as Sub./Hony. Lt. on 31.12.87 and re-employed as Sub-Inspector will draw his full pension of Rs. 1650.00 plus his pay of Rs. 1640.00, being the minimum of the revised pay scale of the post, whereas the applicant who retired as Sub. Maj/Hony. Captain in 1979 will in effect draw a pension of Rs. 458.00 only as the enhanced amount of pension of Rs. 589.00 will be deducted from his pay. Thus Shri Rohitaswa Singh gets double benefit i.e. full pension calculated on the revised pay scale of the post in the Army as well as pay in the revised pay scale of the re-employed post of Sub-Inspector. Similarly, a Sub-Maj./Hony. Lt. retired from the Army after 1.1.86 and re-employed directly in the post of Inspector will draw pay of Rs. 2000/- plus his full pension of Rs. 1650/- totally Rs. 3650/- whereas the applicant in the post of Inspector and who has been in the service on re-employment for 8 years draws Rs. 2518.00 (Rs. 1471.00 + Rs. 589.00). The applicant has also cited the case of Shri Jagan Nath who is junior in Army rank to the applicant but who gets more emoluments by adding military pension to their respective salaries.

5. The applicant has contended that the very principle of taking into account the pensionary benefits of re-employed personnel for the purpose of fixation of pay in the Civil service of the Central Government is arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution. The pay of the applicant has been fixed in accordance with the guidelines contained in the Deptt. of Personnel's O.M. dated 11.9.87 which does not envisage any reduction on account of enhanced pension. Thus the impugned order is violative of Government rules. While fixing the pay of the appli-

cant in accordance with the Department of Personnel & Training O.M. dated 9.12.86, the applicant was not given any special gain over other similarly placed persons. As such, the reduction of the increased amount of pension is uncalled for. Rule 7 of the C.C.S. (Revised Pay) Rules, 1986, does not provide for making any distinction in pay fixation of military pensioners in respect of those who pay was fixed with reference to the pension as well as in respect of those whose pay was fixed ignoring their pension.

6. The respondents in their reply have stated that the application is misconceived and is not maintainable under law. No cause of action has accrued in favour of the applicant against the respondents. The application is bad for mis-joinder of parties. Respondent Nos. 2 and 3 are neither necessary nor proper parties to the application. They are liable to be deleted from the pleadings. The applicant has not come with clean hands to the Tribunal. He has suppressed material facts as Annex. III to the application at page 32 is not correct. The application is devoid of any merit and is liable to be rejected.


7. According to the respondent, the applicant has represented against pay fixation in the revised pay scales of Sub-Inspector w.e.f. 1.1.86 and in the revised scale of Inspector w.e.f. 1.5.86. He has pleaded that the amount of Rs. 589.00 on account of enhanced pension, admissible to him w.e.f. 1.1.86, may not be deducted from his pay. The amount of Rs. 589.00 on account of enhanced pension admissible to him from 1.1.86 has been deducted from the applicant's pay in accordance with the Department of Personnel & Training's O.M. dated 11.9.87 which lays down that the pay fixation thereunder amounts to only deduction of increased amount of pension from the pay already fixed in the revised pay scale. His pay in the grade of Inspector has been fixed in accordance with the rules. The applicant has brought the anomaly while quoting the cases of other re-employed Inspectors and has, therefore, sought relief stating that the Inspectorate's order may be modified to exclude the provision relating to deduction of Rs. 589.00 on account of the increase in the revised pension and also no recovery of arrears should be made. According to the respondents, the pay fixation has been done in accordance with the Department of Personnel's O.M. dated 9.12.86 and 11.9.87. The pay fixation by deducting increased pension is, therefore, in order. The applicant's pay was fixed at Rs. 530.00 on his re-employment instead of the minimum of Rs.

425/- in the pre-revised scale of Rs. 425-600, plus special pay of Rs. 50/- p.m. This benefit was given to him by giving him 7 additional increments in protection of the last pay (Rs. 1000.00) drawn by him in Army Service. The applicant was drawing a basic pay of Rs. 600/- on 1.1.86 being the maximum of the pre-revised scale of Rs. 425-600 when his pay was fixed at Rs. 1940.00 in the revised pay scale of Rs. 1640-2900 in terms of Deptt. of Personnel & Training's O.M. dated 9.12.86 which lays down guidelines for fixation of pay of re-employed military pensions. Had the applicant not been given benefit of 7 additional increments, his pay would have been fixed at Rs. 1640.00 instead of Rs. 1940.00 w.e.f. 1.1.86 as in the case of Shri Jagan Nath who was re-employed as Sub Inspector in 1979 i.e. prior to the application. The protection of pre-retirement pay amounts to giving credit for the past service which is not done in cases where the entire pension is ignored. Regarding the point raised by the applicant against O.M. dated 8.2.83 that it is arbitrary in that it imposes the condition of re-fixation of pay afresh for the existing employees opting for the revised orders, it has to be argued that even in the earlier orders issued from time to time wherein the quantum of the ignorable pension was enhanced periodically, the same condition for re-fixation of pay afresh for the existing re-employed persons opting for these orders had existed. Thus the O.M. dated 8.2.83 does not introduce a new condition which did not exist earlier. Further, the O.M. dated 8.2.83 brought about a total change in the matter of pay fixation as with the introduction of the benefit of fully ignoring the entire pension, the re-employed pensioners came to be treated on par with directly recruited persons without any link with reference to their pre-retirement pay or pension drawn.

8. According to the respondents, the applicant's contention that he had not been given an opportunity to exercise option for fixation of his pay under the provision of O.M. dated 11.9.87, this order did not provide for obtaining any option from the concerned persons. As per the clarification issued by the Cab. Sectt. vide their U.O. dated 5.2.88, the pay fixation in terms of OM dated 11.9.87 was not to be done with reference to their pension, and last pay drawn but only the enhanced amount of pension admissible from 1.1.86 was to be deducted from the pay already fixed in the revised pay scale w.e.f. 1.1.86. The inference drawn by the applicant that the guidelines contained in the Deptt. of Personnel's O.M. dated 11.9.87

does not envisage any deduction on account of enhanced pension is not correct as clarified in the aforesaid Cabinet Sectt.'s U.O. No. 1/48/87-EA.I dated 5.2.88.

9. It has been argued on behalf of the applicant that he did not get any advantage of the pension in fixation of pay on re-employment as the last pay drawn by him in the Army was Rs. 1000/ and pension from the Army was only Rs. 359.00 and since the pay fixed was less than the pay drawn in the Army, less pension, the question of deduction of pension did not arise. This may not be entirely correct as in fixing his pay at Rs. 530.00 per month, the amount of pension ignorable for fixation of pay amounting to Rs. 125.00 has been taken into consideration. It may also be correct that he did not exercise any option in 1983, because he would not have gained anything by exercising an option. It is, however, clear that when the Government gave an option to re-employed ex-servicemen for ignoring the pension, the intention was to help such ex-servicemen. Even in the case of Commissioned Officers pension upto Rs. 500.00 was not to be deducted from their salary on re-employment. When these rules were made, it was not contemplated that pensions would be increased substantially as a result of the recommendations of the 4th Pay Commission. The applicant apparently did not give any option as he would have not been helped in any way by giving such an option in view of the fact that he was already drawing 7 increments on the basis of previous service in the Army and was in fact getting pay of the post plus pension or substantial part of the pension. After declaring that in the case of non-commissioned officers, the pension would be ignored completely while fixing pay on re-employment, it might not be correct to relate enhanced pension to the revised scales of pay. The increments plus pay at the starting level of the scale were allowed by Government under the then existing rules prior to 1983 but the principle that in the case of Defence personnel below the rank of Commissioned Officers, pension would be ignored completely while fixing the salary on re-employment continues since 1983. It is true that under the rules of 1983, the salary of the applicant would have been fixed at the initial stage of the pay scale if he were to get the advantage of ignoring the pension, but it cannot be the intention of the Government to reduce the salary fixed earlier. In the case of ex-servicemen appointed on re-



employment basis after 1.1.1986, the quantum of pension becomes irrelevant and pay is fixed in the time scale. The only consideration is that the applicant has got advantage of 7 increments, namely, a sum of Rs. 105.00 per month at the time of initial fixation of his salary. Ignoring of pension on re-employment is a concession given to ex-servicemen. As such, a liberal interpretation has to be given to various orders issued by Government. It cannot be intention that the pay already fixed under a certain formula should in any case be reduced. In fact, the increase in pay scales and pension is due to the increased cost of living and if in the case of persons appointed after 1.1.86, the element of pension is not deducted from the salary on re-employment, we need not grudge the grant of some increments given to the applicant according to the rules then existing. As stated earlier, the purpose of the Office Memoranda of 1983 and 1986 was to benefit the ex-servicemen and it does not stand to reason that because pension has been enhanced, the older entrants should be deprived of the enhanced pension, whereas persons appointed after 1986 would get the revised scale of pay as well as enhanced pension. It is true that the applicant and a few others similarly placed would get advantage of their past military service in equal or higher scale of pay by getting advance increments in the scale of Sub Inspector and there is, therefore, some logic in the circular issued by the Cabinet Secretariat that this amounts to unintended benefit to the applicant, but having fixed his salary prior to 1983, there may not be much justification in reducing the salary once fixed and recovering the excess payment. This whole question has arisen because the amount of enhanced pension is substantial, but in view of the fact that Government have always tried to help ex-servicemen, pay fixed under valid rules may not be changed to the disadvantage of such persons at a later stage. I hold that such ex-servicemen should not be deprived of the benefit of enhanced scale of pay as well as enhanced pension as the two are quite separate. At present, in the case of ex-servicemen, the amount of pension, enhanced or otherwise, would not be taken into consideration while fixing their pay on re-employment. When in 1983, Government had asked for the option of ex-servicemen whether they would like to get their pay fixed at the initial stage of the pay scale, without deduction of any pension, and the applicant did not give any option, they fixed his salary ^{without deduction of advanced increments} at the initial stage. Once the salary was fixed in 1983 and the

intention was that in the case of ex-servicemen below the rank of Commissioned Officers pension would not be deducted from the salary of the post on re-employment, the issue of linking enhanced pension with salary at a later date becomes irrelevant.

10. In the circumstances, the application is allowed and the respondents are directed not to deduct the enhanced portion of pension with effect from 1.1.1986. Any recovery made from the applicant should be refunded to him within a period of three months. There will be no orders to cost.

B. C. Mathur
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(B. C. Mathur)
Vice-Chair man